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25 County of Alameda, et al.

26 **UNITED STATES DISTRICT COURT**  
27 **NORTHERN DISTRICT OF CALIFORNIA**

28 20 FRANK SANTOS, DIANE QUALLS, and  
21 REBECCA JOHNSON, on behalf of  
22 themselves and all others similarly situated,  
23 Plaintiffs,

Case No. C04-02725 (JCS)

24 **SETTLEMENT AGREEMENT AND**  
25 **STIPULATED ORDER**

26 v.  
27 COUNTY OF ALAMEDA, BOARD OF  
28 SUPERVISORS OF ALAMEDA COUNTY,  
ALAMEDA COUNTY SOCIAL SERVICES  
AGENCY, and CHET HEWITT, in his  
capacity official capacity as Director of the  
Alameda County Social Services Agency; and  
DOES 1-10, inclusive,  
Defendants.

## SETTLEMENT AGREEMENT AND STIPULATED ORDER

## I. INTRODUCTION

3 On July 7, 2004, Plaintiffs filed this class action on behalf of General Assistance (“GA”)  
4 recipients with mental disabilities to enjoin the County of Alameda and its Social Services  
5 Agency (collectively, “the County”) from discontinuing GA benefits for recipients with mental  
6 disabilities in alleged violation of the Americans with Disabilities Act (“ADA”), California  
7 Welfare and Institutions Code § 17001.5 and other laws. Defendants answered the complaint  
8 and denied liability. On January 28, 2005, following substantial discovery, Plaintiffs filed  
9 motions for preliminary injunction, class certification and leave to amend their complaint.  
10 Defendants opposed the motions for preliminary injunction and class certification, but did not  
11 oppose Plaintiffs’ motion for leave to amend.

12        The parties now desire to resolve this matter by agreement to avoid the risks and burdens  
13 of further litigation. They have therefore entered into this Settlement Agreement and now  
14 submit it to the Court for approval. The Court has not determined whether the County has  
15 violated any law, and, by entering into this Settlement Agreement, the County does not admit  
16 that it is, or has been, in violation of any law.

17 On motion of all parties, and the parties consenting thereto, it is therefore ORDERED,  
18 ADJUDGED, AND DECREED AS FOLLOWS:

## II. JURISDICTION

20 The Court has personal jurisdiction over the parties, federal question subject matter  
21 jurisdiction of this action under the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*  
22 and supplemental subject matter jurisdiction over Plaintiffs' state law claims. Plaintiffs assert  
23 claims that they believe would, if proved, authorize the Court to grant the injunctive relief set  
24 forth in this agreement. Venue is proper in this District.

### III. DEFINITIONS

26 For purposes of this Settlement Agreement, the following definitions shall apply:

27       1.     “The County” or “Defendants” shall mean the County of Alameda, its Board of  
28 Supervisors, its Social Services Agency (“SSA”) and the SSA Director.

1           2.     “Mental Disability” is defined with reference to ADA, 42 U.S.C. § 12131,  
 2 its regulations 28 C.F.R. § 35.104 (4)(1)(i), and California Government Code § 12926(i).

3           3.     “Plaintiffs” shall mean Frank Santos, Dianne Qualls, and Rebecca Johnson.

4           4.     “Parties” shall mean the County and Plaintiffs.

#### 5           **IV. COMPLIANCE**

6           The County shall adhere to the provisions of the ADA as they apply to GA applicants and  
 7 recipients.

#### 8           **V. GENERAL ASSISTANCE REPORTING REQUIREMENTS**

9           The County agrees to make the following changes to its reporting requirements within  
 10 nine months from the effective date of this Settlement Agreement. The parties or the Court may  
 11 extend this deadline upon a showing of good cause.

##### 12           **A. Conversion To Quarterly Reporting**

13           The County will convert from a monthly to a quarterly reporting system in its GA  
 14 program so that GA recipients will be required to report changes in income and/or household  
 15 status to the County on a quarterly basis using the QR7 (Quarterly Reporting) report form  
 16 (“QR7”). The QR7 will be due 30 days before the commencement of the new quarter.

##### 17           **B. Exemptions From The Reporting Requirement**

18           The County, as set forth in Section VI of this Agreement, will establish standards and  
 19 procedures for exempting from the quarterly reporting requirements certain GA recipients. The  
 20 County shall also exempt from the quarterly reporting requirements GA recipients who are 64  
 21 years and older.

##### 22           **C. Notice of Proposed Action**

23           If a recipient has failed to submit a QR7 in a timely manner, the County may issue a  
 24 Notice of Proposed Action 5 days after the QR7 form is due. GA recipients will have until the  
 25 first day of the new quarter to submit their QR7 without experiencing a loss of benefits. GA  
 26 recipients who are not classified as exempt from the reporting requirements and who fail to  
 27 submit the QR7 by the first day of the new quarter will have an additional 15 calendar days in  
 28 that month to submit their QR7. If a GA recipient submits the QR7 within the specified cure

1 period, the County will restore the recipient's GA benefits and not require re-application. GA  
 2 recipients will have only three opportunities to cure their failure to submit the QR7 each year. In  
 3 the event that there are more than three such failures during the year, the County may  
 4 discontinue the recipient's GA benefits without an opportunity to cure and the recipient must re-  
 5 apply in order to receive GA benefits again.

6 The County shall revise its Notice of Proposed Action with regard to a failure to submit a  
 7 timely, complete QR7 form so that it will explain, in a manner comprehensible to GA recipients  
 8 who are not classified as exempt from the reporting requirement, (1) when GA will be  
 9 discontinued if the recipient does not submit a complete QR7; (2) how the GA recipient may  
 10 avoid an interruption in benefits by submitting the complete QR7 before the first day of the  
 11 following month; (3) how the recipient may have the GA benefits restored without re-applying  
 12 by submitting the complete QR7 within fifteen days into the following month, but that only three  
 13 such opportunities are available in any calendar year; (4) that the recipient may show good cause  
 14 to excuse non-compliance with the requirement to timely submit the QR7 form; and (5) what  
 15 constitutes good cause, willfulness and negligence, consistent with the requirements of Welfare  
 16 and Institutions Code § 17001.5.

17 **D. Good Cause Considerations**

18 The County shall provide recipients who allegedly fail to submit their QR7 in a timely  
 19 manner an opportunity to show good cause for their failure consistent with the requirements in  
 20 Welfare & Institutions Code § 17001.5 by contacting their respective eligibility worker or  
 21 employment counselor. If good cause exists for the recipient's failure to submit the QR7 in a  
 22 timely manner, the County will not track the failure to submit the QR7 as a negligent act and will  
 23 rescind the Notice of Proposed Action and restore the recipient's GA benefits.

24 If a GA recipient's non-compliance with QR7 reporting requirement is negligent, the  
 25 County will rescind the Notice of Proposed Action and restore the recipient's GA benefits; aid  
 26 will continue unless it is the recipient's third negligent act of failing to comply with program  
 27 requirements.

28

If the County determines that the recipient's GA benefits will be discontinued or result in a sanction due to a willful failure or the third negligent failure to comply with program requirements, the recipient will have a right to notice of the proposed discontinuance or sanction and a hearing and aid-paid-pending, if applicable, as provided for in County GA regulations § 9-5. When a recipient is accused of three negligent acts of failing to comply with program requirements, the recipient may challenge at the hearing the determination of negligence as to any and all of these three negligent acts.

The County shall adopt and implement good cause standards and procedures as well as guidelines to direct its staff in making appropriate good cause determinations and distinguishing between willful and negligent acts of non-compliance.

## **VI. MODIFICATION OF IDENTIFICATION AND ACCOMMODATION SYSTEM**

The County shall modify its policies and procedures regarding the identification and accommodation of persons with mental disabilities. This modification shall include changes to the County's standards and procedures for (1) identifying applicants and recipients with mental disabilities and (2) providing reasonable accommodations to applicants and recipients with mental disabilities. The County shall complete its modification of the GA identification and accommodation system within nine months after the Court's approval of this Settlement Agreement unless, upon a showing of good cause, the Court or the parties extend the deadline.

### **1. Selection of a Joint Expert**

The parties have agreed to retain Susan Mizner as their Joint Expert to evaluate the County's current system for identifying GA applicants and recipients with mental disabilities and providing them with reasonable accommodations, such as exempting certain GA recipients from the GA reporting requirement.

### **2. Joint Expert's Evaluation, Report and Recommendations**

The parties shall meet with the Joint Expert before she begins her evaluation and periodically thereafter and, in conjunction with the Joint Expert, identify specific policies and practices that are to be evaluated. The parties shall cooperate with the Joint Expert in her evaluation of the County's policies and procedures and the County shall provide her with

1 unrestricted access to its records subject to appropriate conditions for confidentiality. After  
 2 evaluating the County's system, the Joint Expert shall issue a report with findings and  
 3 recommendations ("report") explaining how the County can improve its system for identifying  
 4 and accommodating GA applicants and recipients with mental disabilities. The Joint Expert's  
 5 report will be due on December 16, 2005.

6 **3. Implementation of Joint Expert Recommendations**

7 Within 30 days after issuance of the Joint Expert's report, the County shall submit to the  
 8 Joint Expert and Plaintiffs a written response to the Joint Expert's report stating (1) its areas of  
 9 agreement or disagreement with any finding, (2) a discussion of its plans to adopt and implement  
 10 any of the recommendations, and (3) a proposal for an alternative course of action should the  
 11 County object to the implementation of any recommendation. Within 30 days after receiving the  
 12 County's response, Plaintiffs shall submit to the County and the Joint Expert a written reply to  
 13 the County's response, including any disagreement Plaintiffs may have with the Joint Expert's  
 14 report and alternative recommendations, if any. Within 15 days thereafter, the parties shall meet  
 15 with the Joint Expert in an attempt to resolve their differences and, if they are unable to do so,  
 16 either party may seek relief as provided in Section IX.C of this Settlement Agreement.

17 **VII. INTERIM PROCEDURE**

18 Until the County has adopted and sufficiently implemented appropriate policies and  
 19 procedures to identify and make reasonable accommodations for all GA applicants and recipients  
 20 with mental disabilities, the County shall adopt and implement the following interim procedures  
 21 to protect against improper discontinuances due to mental disabilities for alleged noncompliance  
 22 with the reporting requirement.

23 Upon the effective date of this agreement the County will promptly implement (1) the 15-  
 24 day cure period described in Section V.C., and (2) the exemption described in Section V.B. for  
 25 all GA recipients aged 64 and older. During the interim period, the County will perform a  
 26 review of circumstances surrounding the discontinuance of that category of GA recipients  
 27 classified as "unemployable" who fail to comply with the monthly reporting requirement and  
 28 cure their non-compliance. The County will determine whether any mental disability-related

1 factors may have adversely affected the recipient's ability to submit the monthly report, cure, or  
 2 defend against an allegation of non-compliance. If it is likely the recipient's non-compliance  
 3 with the reporting requirement was mental disability-related, the County will rescind the  
 4 discontinuance of a recipient's benefits if the recipient's non-compliance with the reporting  
 5 requirement is determined by the County to have been mental disability-related. If the  
 6 County determines that the recipient has a mental disability which adversely affects his/her  
 7 ability to submit the monthly report, cure, or to represent him or herself in an administrative  
 8 hearing, the County shall provide the recipient with a reasonable accommodation. The County  
 9 will incorporate into this process a third party extern, under the auspices of Judge Maria-Elena  
 10 James. This third party will participate in the review and the SSA will consider any  
 11 recommendations that the third party makes with respect to a recipient's status.

12 Beginning six months after the effective date of the Settlement Agreement and for each  
 13 six months thereafter pending implementation of the interim procedure, the County shall collect  
 14 and provide to counsel for Plaintiffs data showing the number of GA recipients (a) whose files  
 15 were reviewed pursuant to the interim procedure, (b) whose GA benefits were not discontinued  
 16 as a result of the interim procedure, and (c) who received an accommodation as a result of the  
 17 interim procedure.

18 **VIII. REPORTING**

19 Beginning six months after the effective date of this Settlement Agreement and for each  
 20 year thereafter during the Court's continuing jurisdiction, the County shall provide the  
 21 information listed below to counsel for Plaintiffs.

22 **A. Data**

23 Data which will be collected quarterly showing the number of GA recipients (a) who  
 24 applied for GA, (b) who were approved for GA, (c) who were identified as having a mental  
 25 disability, (d) who were provided with an accommodation by the County, including the type of  
 26 accommodation, (e) who were classified as exempt, (f) who were discontinued from GA benefits  
 27 and for what type of violation, (g) who cured their alleged non-compliance with the reporting  
 28

1 requirement, (h) who did not cure their alleged non-compliance with the reporting requirement,  
 2 and (i) who are receiving GA according to the County's most recent count of GA recipients.

3                   **B.        Interviews**

4 Interviews with the GA official(s) who are most knowledge regarding (a) discontinuances  
 5 for non-compliance with the reporting requirement, (b) the County's system for identifying  
 6 applicants and recipients with mental disabilities, and (c) the County's system for providing  
 7 reasonable accommodations to recipients with mental disabilities.

8                   **C.        Additional Information**

9                   The parties shall, in consultation with the Joint Expert, develop additional reporting  
 10 requirements and procedures for providing additional information to counsel for Plaintiffs, unless  
 11 the Joint Expert determines that no additional reporting information is needed.

12 **IX. EFFECTIVE DATE, DURATION AND ENFORCEMENT**

13                   **A.        Effective Date and Continuing Jurisdiction**

14                   The effective date of this Settlement Agreement is the date on which the Court grants its  
 15 approval of the Settlement Agreement. The Court's jurisdiction over this Settlement Agreement  
 16 shall continue for two years from the date that the County implements its quarterly reporting  
 17 system as required by Section V.A. After that time period, this action shall be dismissed with  
 18 prejudice as to the named Plaintiffs only. If the County has failed to comply with the terms and  
 19 conditions of the Settlement Agreement, Plaintiffs may request, and the Court may grant, a  
 20 continuation of its jurisdiction for a period sufficient to remedy the alleged non-compliance.

21                   **B.        Enforcement**

22                   The Court shall retain jurisdiction for the period outlined above for the purpose of  
 23 enforcing this Agreement. Named Plaintiffs or any Alameda County GA recipient represented  
 24 by Plaintiffs' Counsel may enforce this Settlement Agreement.

25                   **C.        Dispute Resolution Process**

26                   Only during the term of this Court's jurisdiction, the parties agree to meet and confer for  
 27 a period of up to 30 days to attempt to resolve any disputes that arise under this Settlement  
 28 Agreement, including but not limited to disputes concerning the County's modification of its

1 policies and procedures for identification and accommodation, its interim procedure pending the  
 2 modification, and the form and content of its notice of action. If the parties cannot resolve their  
 3 dispute through the meet and confer process, either party may file a motion and may have  
 4 reasonable discovery limited to the issues of the motion. The discovery rights will not be limited  
 5 due to the absence of class certification.

6 **X. MISCELLANEOUS PROVISIONS**

7       **A. Entire Agreement**

8       This Settlement Agreement contains the entire agreement between the parties regarding  
 9 the General Assistance reporting requirement. No modifications or limits will be binding on the  
 10 parties unless expressly provided for in this Agreement or made by writing signed by all parties.  
 11 This Agreement expresses the complete and final understanding with respect to the subject  
 12 matter of this Agreement. The parties hereto understand and agree that the terms of this  
 13 Agreement supersede any prior discussions, understandings, or agreements between them related  
 14 to the subject matter hereof.

15       **B. Counterparts**

16       This Agreement may be executed in counterparts, each of which will be considered an  
 17 original, but all of which, when taken together, will constitute one and the same instrument.

18       **C. Severability**

19       In the event any portion of this Agreement is deemed to be unenforceable, or is in  
 20 conflict with applicable law, the remainder of this Agreement will be enforced and will remain in  
 21 full force and effect.

22       **D. Interpretation**

23       The language of this Agreement will be construed as a whole according to its fair  
 24 meaning and not strictly for or against any of the parties. The headings in this Agreement are  
 25 solely for convenience and will not be considered in its interpretation. Where required by  
 26 context, the plural includes the singular and the singular includes the plural. This Agreement is  
 27 the product of negotiation and joint drafting so that any ambiguity will not be construed against  
 28 any party.

1                   **XI. ATTORNEYS' FEES, COSTS AND EXPENSES**

2                   The resolution of Plaintiffs' claims for attorneys' fees, costs and expenses remains under  
 3 the jurisdiction of the Court. The parties agree to meet and confer to attempt to settle all claims  
 4 for attorneys' fees, costs and expenses for any work performed by Plaintiffs' counsel and their  
 5 firms in connection with this litigation up until the date this Agreement is approved by the Court.  
 6 If the parties are unable to reach an agreement within 90 days from the effective date of this  
 7 agreement, Plaintiffs may file a motion with the Court for an award of reasonable attorneys' fees,  
 8 costs and expenses.

9                   **XII. BROU SETTLEMENT AGREEMENT**

10                  Within 60 days after the effective date of this Settlement Agreement, Counsel for  
 11 Plaintiffs in *Brou* shall file a dismissal without prejudice of the *Brou* lawsuit. However, until  
 12 such time as the County modifies its identification and accommodation system following the  
 13 findings and recommendations of the Joint Expert as set forth in Section VI of this Settlement  
 14 Agreement, the County shall continue to carry out the terms and conditions set forth in the  
 15 following sections of its Settlement Agreement filed in *Brou et. al. v. County of Alameda et. al.*,  
 16 No. C-96-3206 CRB (N.D. Cal. 1998) (referred to herein as "Brou"):

- 17                  • Section E entitled "Identification and Assessment of Disabilities" excluding  
 18                    subsections c and d in Section E.3;
- 19                  • Section F, entitled "Modification of the Sanction Process," excluding subsection  
 20                    3;
- 21                  • Section G, entitled "Reasonable Accommodation Policy," excluding subsection 2.

22                  Once the ADA claims in this lawsuit have been resolved, the settlement agreement in *Brou* shall  
 23 be superseded.

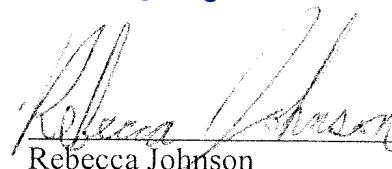
24                  DATED: 9/1/05, 2005

  
Frank Santos

27                  DATED: 9/12/05, 2005

  
Diane Qualls

1 DATED: \_\_\_\_\_, 2005  
2

  
Rebecca Johnson

3  
4  
5 DATED: \_\_\_\_\_, 2005  
6

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Kevin Knestrick  
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14

15 Maria Foscarinis  
16 Rebecca Troth  
17 NATIONAL LAW CENTER ON  
18 HOMELESSNESS & POVERTY  
19

20 By:

21 \_\_\_\_\_  
22 Attorneys for Plaintiffs

23 DATED: \_\_\_\_\_, 2005  
24

25 Richard E. Winnie  
26 Donna R. Ziegler  
27 Jason F. Lauren  
28 OFFICE OF THE COUNTY COUNSEL,  
COUNTY OF ALAMEDA

By:

Attorneys for Defendant

29 APPROVED AND SO ORDERED:  
30

31 DATED: \_\_\_\_\_, 2005  
32

33 The Honorable Joseph C. Spero  
34 UNITED STATES DISTRICT COURT JUDGE  
35

36  
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38 \\Server\cases\Santos.AlamedaFood\Settlement\Settlement Agreement\Settle.Agreement8.16.doc

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Rebecca Johnson

DATED: 9/1, 2005

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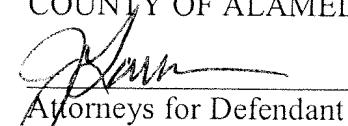
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DATED: 9/1, 2005

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COUNTY OF ALAMEDA

By:

  
Jason F. Lauren  
Atorneys for Defendant

APPROVED AND SO ORDERED:

DATED: October 5, 2005

  
The Honorable Joseph C. Spero  
UNITED STATES DISTRICT COURT JUDGE

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